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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,834	10/17/2000	Toshio Koga	Q60831	1858

7590 03/30/2009

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EXAMINER	
MEINECKE DIAZ, SUSANNA M	

ART UNIT	PAPER NUMBER
3692	

MAIL DATE	DELIVERY MODE
03/30/2009	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOSHIO KOGA

Appeal 2009-0815
Application 09/688,834
Technology Center 3600

Decided[1]: March 30, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN and DAVID B. WALKER, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1 to 7. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

STATEMENT OF CASE

Appellant invented a vehicle onboard electronic toll collection apparatus which includes a decision means for making a decision on when to start collection information communication based on the detected speed of the vehicle and the measured reception field intensity. (Specification 1, 6).

Claim 1 under appeal reads as follows:

> 1. A vehicle-onboard electronic toll collection apparatus, comprising:
>
> (a) vehicle speed detecting means for detecting a speed of a motor vehicle which passes through a toll gate station equipped with an electronic toll collection system;
>
> (b) communication means for exchanging electronic toll collection information for settlement of toll charge/payment transaction with said toll gate station upon passing through said toll gate station;
>
> (c) measuring means for measuring reception field intensity of the received electronic toll collection information within a communication coverage area; and
>
> (d) decision means for making decision on the basis of said detected vehicle speed and said measured reception field intensity as to a location within said communication coverage area where electronic toll collection information communication can be started while sustaining favorable reception field intensity at said detected vehicle speed, to thereby allow said communication means to perform communication processing on the basis of result of said decision,
>
> wherein said vehicle-onboard electronic toll collection apparatus comprises elements (a)-(d), and
>
> wherein said elements (a)-(d) are provided on a vehicle.

The Examiner rejected claims 1 to 5 under 35 U.S.C. § 103(a) as being unpatentable over Fuyama ‘376.

The Examiner rejected claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Fuyama '376 and Fuyama '267.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Fuyama	US 6,259,376 B1	Jul. 10, 2001
Fuyama	US 6,834,267 B1	Dec. 21, 2004

ISSUE

Has Appellant shown that the Examiner erred in finding that Fuyama '376 discloses a decision means for making a decision on when to start collection information communication based on the detected speed of the vehicle and the measured reception field intensity?

FINDINGS OF FACT

Fuyama '376 discloses a vehicle-onboard electronic toll collection apparatus that includes a first sensor s1 and a second sensor s2 (Figure 1). Fuyama '376 discloses that one of the problems associated with electronic toll devices is that two vehicles may communicate with the communication portion 17 of the toll apparatus at the same time because the first vehicle is traveling at a slow speed and thus the two vehicles are in the communication area 29 at the same time (col. 4, ll. 63 to 66). To solve this problem, the Fuyama '376 device starts communication with a vehicle traveling less than 30 kilometers per hour after the vehicle has passed sensor s1 and after a predetermined time interval as measured by a timer 26 has elapsed. However, if the vehicle is traveling so fast that it will reach the sensor s2

before the predetermined time interval has elapsed, i.e. if the vehicle is traveling faster than 30 kilometers per hour, communication begins when the vehicle has reached the sensor s2 (col. 5, ll. 30 to 50). There is no exact speed detected as such, but the speed of the vehicle is related to whether the predetermined time interval has elapsed before the vehicle reaches sensor s2 or not.

In addition, there is no decision made based on the speed of the vehicle and the measured reception field intensity as to a location where the electronic toll collection information communication can be started. Rather, the start of electronic toll collection is triggered by a predetermined time interval after the vehicle passes sensor s1 or by the vehicle reaching sensor s2.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

ANALYSIS

We will not sustain the rejections of the Examiner. The Appellant and Examiner disagree on whether Fuyama '376 discloses a vehicle speed detection means and whether Fuyama '376 discloses the claimed decision means. Even if the Examiner is correct that the sensor arrangement of Fuyama '376 detects the speed of a vehicle, Fuyama '376 does not disclose the decision means that makes a decision as to where within the

communication coverage area to start the communication of toll collection information based on the reception field intensity and the detected vehicle speed. Rather, in Fuyama '376, when a car is moving slowly, less than 30 kilometers per hour, the communication is begun after a predetermined time has elapsed. The decision to start communication is not dependent on the reception field intensity and is not related to a location of the vehicle within the communication coverage area. When a car is moving fast, more than 30 kilometers per hour, communication is always begun when the vehicle reaches the second sensor s2 and is not dependent on the reception field intensity.

In view of the foregoing, we will not sustain the Examiner's rejection of claim 1 and claims 2 to 5, dependent thereon, under 35 U.S.C. § 103(a) as being unpatentable over Fuyama '376. We will also not sustain the Examiner's rejection of claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Fuyama '376 and Fuyama '267, because the Examiner relies on Fuyama '376 for teaching the claimed decision means.

CONCLUSION OF LAW

On the record before us, Appellant has shown that the Examiner erred in rejecting the claims on appeal.

DECISION

The decision of the Examiner is reversed.

REVERSED

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